

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS**

CRAIG CUNNINGHAM, Plaintiff, v. CONSUMER FINANCIAL RESOURCES LLC d/b/a STUDENT LOAN RESOLVE, Defendant	§ § § § § Civil Case No. _____ § § § §
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PLAINTIFF'S ORIGINAL COMPLAINT

1. The Plaintiff in this case is Craig Cunningham, a natural person, who was residing in Dallas County at all times relevant to this Complaint.

2. Defendant Consumer Financial Resources LLC d/b/a Student Loan Resolve may be served by and through its registered agent, Scott M. Freda, 6302 Creekwood Court, Sachse, Texas 75048.

JURISDICTION

3. Jurisdiction of this court arises as the acts arose in this district.

4. This Court has subject matter jurisdiction under 28 U.S.C. § 1331, as this action arises under the TCPA, which is a federal statute.

5. This Court has personal jurisdiction over Defendants because Defendant conducts significant amounts of business within this District.

6. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant conducts significant amounts of business within this District.

FACTUAL ALLEGATIONS

7. On March 18 and 23, April 27 and August 26, 2015, Plaintiff, Craig Cunningham received multiple unwanted and unwelcome calls from the Defendant and the Defendant's agents (calling from 972-590-8713) on his cellular telephone number 615-212-9191. Additionally, on March 17, 2015, Plaintiff received unwanted calls from Defendant's agents (calling from 731-203-1847 and 877-801-2047) on his cellular telephone number 615-212-9191. In all instances, the Defendant and the Defendant's agents used an autodialer. Defendant's agents also conveyed pre-recorded messages to the plaintiff's cellular phone. The Defendant specifically referenced the pre-recorded message made by the Defendant's agent(s). No express consent was given to the Defendant or the Defendants agent to allow them to contact the plaintiff. While the Plaintiff is still in the process of identifying all phone calls, the Plaintiff has logged six calls as of the time of the filing of this Complaint,

8. The calls started with a pre-recorded message after several seconds of dead air time.

9. When the calls connected to an agent, the Plaintiff was told that he was called by Defendant. In every call, the Plaintiff noticed a delay between answering the phone and the call connecting with a live person, which is characteristic of an automated telephone dialing system.

This is just one of many harassing calls the Plaintiff has received and as Defendant is just content to knowingly call what could be wrong numbers, the Plaintiff is therefore subjected to multiple harassing phone calls.

10. The calls in all instances solicited services relating to refinancing and/or "resolution" of student loan debt.

11. Defendant also used an automated telephone dialing system to call the Plaintiff's cell phone in violation of the TCPA, 47 USC 227(b) and 47 USC 227(c)(5) as codified under 47 CFR 64.1200(b).

12. The calls violated 47 USC 227(b) as the calls were automated and placed to the Plaintiff's cell phone without the Plaintiff's consent and without an emergency purpose.

13. The calls violated 47 CFR 64.1200(b) as the artificial or pre-recorded message failed to state at the beginning of the message the identity of the business, individual, or entity that is responsible for initiating the call. In fact, no name was given for the entity placing the call and even the agents only stated who they were calling from after the Plaintiff asked repeatedly.

14. These calls were knowingly and willfully placed and the Defendants had or should have ascertained they were calling the wrong person.

ACTUAL DAMAGES

15. Plaintiff has suffered actual injury as a result of Defendants' telephone calls, including, but not limited to:

- Reduced Device storage space;
- Data usage;
- Plan usage;
- Lost time tending to and responding to the unsolicited texts;
- Invasion of Privacy and loss of concentration

CAUSE OF ACTION:

Violations of the Telephone Consumer Protection Act (TCPA)

16. Plaintiff Cunningham incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

17. The foregoing actions by Defendants constitute multiple breaches of the TCPA by placing automated calls without the Plaintiff's consent to the Plaintiff's cell phone.

PRAYER

- A. WHEREFORE, Plaintiff, Cunningham, respectfully prays and requests that judgment be entered against Defendant
- B. Statutory damages of \$3,000 for each phone call
- C. \$50,000 in actual damages
- D. Pre-judgment interest from the date of the phone calls
- E. Enjoining the defendant and its agents from additional violations by naming the telemarketers that they are using;
- F. Attorney's fees for bringing this action as incurred;
- G. Costs of bringing this action; and
- H. For such other and further relief as the Court may deem just and proper

Dated: March 8, 2017	<u>/s/ Aaron K. Mulvey</u> Aaron K. Mulvey State Bar No. 24060309 The Law Offices of Aaron K. Mulvey, PLLC 518 N. Manus Dr. Dallas, TX 75224 Tel: 214-946-2222 Aaron@MulveyLaw.com
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